

IT IS ORDERED

Date Entered on Docket: December 8, 2021



The Honorable Robert H Jacobvitz
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

DEBRA ANN FACIO,

Debtor.

Case No. 20-11270-JL13

**STIPULATED ORDER MODIFYING AUTOMATIC STAY AND ABANDONMENT OF
PROPERTY OF THE ESTATE**

THIS MATTER comes before the Court upon stipulation of the parties herein as evidenced by their respective signatures below, Vanderbilt Mortgage and Finance, Inc. (“Creditor” or “Vanderbilt Mortgage and Finance, Inc.”), by and through its attorney of record, Davis Miles McGuire Gardner, PLLC (Ron Holmes), and the Chapter 13 trustee Tiffany M. Cornejo appearing *pro se*, the Debtor appearing by and through their attorney of record, Law Office of Gerald R Velarde, P.C. (Gerald Velarde) and the Court being otherwise sufficiently advised in the premises FINDS:

1. The Debtor Debra Ann Facio, (“Debtor”) filed for relief on June 24, 2020, under Chapter 13. Tiffany M. Cornejo has been appointed the Chapter 13 trustee (“Trustee”).

2. On October 22, 2021, Creditor served the Motion for Relief from Stay (Doc. #47) (“Motion”) and an Amended Notice of the Deadline for Filing Objections to the Motion (Doc. #49) (the “Notice”) on Debtor’s attorney Gerald Velarde and Trustee by use of the Court’s case management and electronic filing system for the transmission of notice as authorized by Fed.R.Civ.P. 5(b)(3) and NM LBR 9036-1, and on the Debtor Debra Ann Facio, by United States first class mail, in accordance with Bankruptcy Rules 7004 and 9014.

3. The Motion relates to Debtors’ interest in real property including a manufactured home described as:

A 0.75 acre tract of land situate in Sections 3 and 4, Township 25 South, Range 2 east, N.M.P.M, of the U.S.R.S. Surveys, being part of U.S.R.S. Tract 18-4A4, 4A6, 4A1, 4A7 and 4A9, in San Miguel, Dona Ana county Records, New Mexico, and more particularly described as follows to wit:

BEGINNING at the northeast corner of the tract herein described, WHENCE the southeast corner of the aforementioned Section 3 bears N. 48 degrees 18 minutes 46 seconds E., 377.17 feet and S. 77 degrees 40 minutes 55 seconds E., 5340.18 feet;

THENCE from the point of beginning S. 35 degrees 15 minutes 51 seconds E., 48.88 feet to the southeast corner of the tract herein described;

THENCE S. 46 degrees 45 minutes 55 seconds W., 352.47 feet to an angle point of the tract herein described marked by a found iron rod;

THENCE S. 47 degrees 21 minutes 02 seconds W., 199.39 feet to the southwest corner of the tract herein described;

THENCE N. 36 degrees 16 minutes 35 seconds W., 92.31 feet to the northwest corner of the tract herein described;

THENCE N. 60 degrees 35 minutes 04 seconds E., 145.32 feet to an angle point of the tract herein described marked by a found iron pipe;

THENCE N. 48 degrees 18 minutes 46 seconds E., 407.69 feet to the place and point of beginning containing 0.75 acres of land, more or less.

including any improvements, fixtures, and attachments, such as, but not limited to, mobile homes.

4. The property is more commonly known as 19316 Hwy 28, San Miguel, NM 88058 (“Property”) but if there is any discrepancy between the legal description and the common address then the legal description shall control. The Property includes a 2005 CMH Oakwood (“Collateral”) with serial number OP360447AB financed by the Note and subject to a valid perfected Deed of Trust security interest held by Creditor. The Notice provided for an objection deadline of twenty-one (21) days plus three (3) for mailing from the date of service of the Notice.

5. The Notice was sufficient in form and content.

6. The objection deadline expired on November 18, 2021.

7. On November 18, 2021 the Debtor filed a Response to the Motion (Doc. #52).

No other parties have filed a responsive pleading.

8. Commencing December 15, 2021 through July 15, 2022, Debtor shall make an additional monthly payment of \$536.76 per month, then a final payment of \$536.73 on August 15, 2022 in order for post-petition arrears in the sum of \$4,830.81 to be paid. Debtor shall remain current on all future post-petition payments from this point forward, including the regular payment due for December 1, 2021. This sum represents the post-petition arrears, as well as attorney’s fees and costs associated with the filing of the Motion, as itemized below:

Arrears	\$4,051.42
Attorney’s fees	\$537.60
Tax	\$25.14
Costs	<u>\$216.65</u>
Total	\$4,830.81

9. Payments shall be made directly to Creditor at:

Vanderbilt Mortgage
P.O. Box 9800
Maryville, TN 37802

with reference to the last four digits of the loan number 3840.

10. Debtor shall timely perform all of her obligations regarding the payments described herein and under Creditor's loan documents as they come due, including but not limited to the payment of real estate taxes, maintaining insurance coverage, Chapter 13 Plan payments, and any and all senior liens.

11. In the event that the Debtor fails to tender payment as due for the December 15, 2021, payment and forward, Creditor may file a Notice of Default with the Court, which will be mailed to the Debtor and sent by electronic notification to Debtor's counsel. The Debtor will have ten (10) days from the filing of a Notice of Default to cure the default. The Debtor will only receive two (2) such Notices. If the Debtor fails to cure the default within ten (10) days from the filing of a Notice of Default then, upon Creditor's filing of an Affidavit of Default, the automatic stay effectuated by Debtor's bankruptcy filing will be lifted as ordered herein, so that Creditor may avail itself of the rights and remedies afforded under its Note and Mortgage, including but not limited to the right to foreclose against the Property if available under State Law.

12. In the event that the Debtor defaults a third time, Creditor may immediately proceed with the filing of its Affidavit of Default, thereby terminating the automatic stay and abandoning the subject Property as ordered herein, so that Creditor may avail itself of the rights and remedies afforded under its security agreement, including but not limited to the right to foreclose against the Property if available under State Law.

13. In the event the Debtor default, upon proper notice of the default to the Trustee the Trustee shall immediately cease making payments to Creditor pursuant to the Debtor's Chapter 13 Plan, and future payments, if any, will only be made by the Trustee pursuant to an Amended Proof of Claim filed by Creditor for any unsecured deficiency balance.

14. If the Stay is terminated herein due to Debtor's default, then the Stay shall remain in force with respect to the collection of any resulting deficiency and shall be set forth in a proof of claim filed with the Court.

15. There is no just cause to delay the entry of the Order.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Automatic Stay imposed by the filing of the above-entitled and numbered cause of action, as the same pertains to the Property known as 19316 Hwy 28, San Miguel, NM 88058 and the 2005 CMH Oakwood manufactured home with serial number OP360447AB as described above, is modified herein consistent with the terms described above.

IT IS FURTHER ORDERED that this Order shall be effective if this case is converted to any other Chapter under the Bankruptcy Code.

IT IS FURTHER ORDERED that the Chapter 13 trustee's approval to this order is a conditional abandonment of the asset from the estate under 11 U.S.C. §554.

IT IS FURTHER ORDERED that the fourteen (14) day stay requirement of F.R.B.P. 4001(a)(3) is waived as of the date of entry of this order.

IT IS SO ORDERED

END OF DOCUMENT

Submitted by:

DAVIS MILES MCGUIRE GARDNER, PLLC

s/ Ron Holmes (submitted via e-orders)

Ron Holmes

Attorney for Vanderbilt Mortgage and Finance, Inc.

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Approved by:

LAW OFFICE OF GERALD R VELARDE, P.C.

By Approved by email 12/6/2021 reh

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Approved by:

Approved by email 12/6/2021 reh

Tiffany M. Cornejo

Chapter 13 Trustee

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